



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION
Case #: FOO - 206863

PRELIMINARY RECITALS

Pursuant to a petition filed on November 15, 2022, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on December 7, 2022, by telephone.

The issue for determination is whether the petitioner's request is ripe for review by the Division of Hearings and Appeals.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Shanay Neal
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for FoodShare and HealthCare on November 10, 2022.
3. The case was pended for verification for identity, Wisconsin residency and immigration/registration status. A notice of verification needed was mailed to petitioner on November 11, 2022, which specified a due date of December 12, 2022.
4. Due to problems reviewing some verification documents received November 10, 2022 and November 15, 2022, the respondent contacted petitioner, with an interpreter. At that time, the respondent noted the difficulties with reviewing some of the submitted documentation, and informed petitioner that his benefits eligibility was still being processed.
5. The respondent verified that petitioner arrived in the United States on October 17, 2022, and was paroled until December 12, 2022.
6. The respondent issued no decision on petitioner's benefits application prior to the date of the petitioner's December 7, 2022 appeal.

DISCUSSION

While there is no adverse action in this matter that would allow the Division of Hearings and Appeals to address an FS appeal, I note to petitioner that FoodShare benefits and eligibility for immigrants and refugees is specifically regulated.

The following individuals are eligible for FoodShare as U.S. citizens, nationals, and a select group of non-citizens. Individuals listed below do not have to meet any other non-citizen requirements to be eligible for FoodShare.

- U.S. citizens,
- Non-citizen nationals (people born in American Samoa or Swain's Island),
- American Indians born in Canada,
- Members (born outside the U.S.) of Indian tribes under Section 450b(e) of the Indian Self-Determination and Education Assistance Act, and
- Members of Hmong or Highland Laotian tribes that helped the U.S. military during the Vietnam era from August 5, 1964, to May 7, 1975, and who are legally living in the U.S., and their spouses or surviving spouses and dependent children, including full-time students under the age of 22.

To meet the citizenship or qualifying immigrant requirement for FoodShare, a person must be one of the following:

A citizen of the U.S. which is defined as a person who:

1. Was born in the U.S. The U.S. includes: the continental U.S., Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and Northern Mariana Islands, including Guam, or
2. Is a naturalized citizen of the U.S.
2. A person born outside of the U.S. to, or adopted by, at least one U.S. citizen, which is sometimes referred to as a "derivative citizen."
3. A non-citizen with a qualifying immigration status. ...

3.12.1.1 Qualified Immigrant or Immigration Status

1. Use Chart 1 below to determine if a non-citizen is eligible for FoodShare.
2. Use Chart 2 below for decoding the admission or adjustment codes from USCIS. Refer also to Process Help, [Section 82.8 Class of Admission \(COA\) Tables](#).

3. CHART 1

Federal Supplemental Nutrition Assistance Program (SNAP)	
Eligible as a U.S. Citizen/National/Non-Citizen:	
<ul style="list-style-type: none"> • U.S. citizens, • Non-citizen nationals (People born in American Samoa or Swain's Island), • American Indians born in Canada, • Members (born outside the U.S.) of Indian tribes under Section 450b(e) of the Indian Self-Determination and Education Assistance Act, • Members of Hmong or Highland Laotian tribes that helped the U.S. military during the Vietnam era from August 5, 1964, to May 7, 1975, and who are legally living in the U.S., and their spouses or surviving spouses and dependent children, including a full-time student under the age of 22. 	
Immigrant Status Code	Eligible if:
01-Lawfully admitted for permanent residence (LPR)	<ul style="list-style-type: none"> • Meets work quarters, or • Meets military requirement, or • Receives disability benefit, or • Under age 18, or • Has lived in the U.S. as a qualified immigrant for five years from the date of entry, or • A legal resident on August 22, 1996, and born on or before August 22, 1931.
02-Permanent resident under color of law (PRUCOL)	Ineligible
03-Conditional entrant or lawfully present under Section 203(a)(7)	<ul style="list-style-type: none"> • Meets work quarters, or • Meets military requirement, or • Receives disability benefit, or • Under age 18, or • Born before August 22, 1931, or • Has lived in the U.S. as a qualified immigrant for five years from the date of entry, or • A legal resident on August 22, 1996, and born on or

	before August 22, 1931.
04-Refugee lawfully present under Section 207	Eligible
05-Asylee lawfully present under Section 208	Eligible
06-Parolee lawfully present under Section 212(d)(5)	<ul style="list-style-type: none"> • Meets work quarters, or • Meets military requirement, or • Receives disability benefit, or • Under age 18, or • Born before August 22, 1931, or • Has lived in the U.S. as a qualified immigrant for five years from the date of entry, or • A legal resident on August 22, 1996, and born on or before August 22, 1931.
07-IRCA – No longer valid status	Ineligible
08-Work Authorization: Temp.	Ineligible
09-Undocumented Immigrant	Ineligible
10-Illegal Immigrant	Ineligible
11-Cuban/Haitian entrant as defined in Section 501(e) of the Refugee Education Act of 1980	Eligible
12-Considered a permanent resident by USCIS	Ineligible
13-Special agriculture worker under Section 210(A)	Ineligible
14-Additional Special agriculture worker under Section 210A	Ineligible
15-An immigrant whose deportation is being withheld under Section 243(h) or 241(b)(3)	Eligible
16-Battered Immigrant Code the battered immigrant adult or child or parent with the broadest immigrant eligibility category that applies to that person (for example, code a battered refugee immigrant, as a refugee). Document in case comments that the person is a battered immigrant and therefore	Ineligible unless: <ul style="list-style-type: none"> • Meets work quarter requirement, or • Meets military requirement, or • Receives disability benefit, or • Has lived in the U.S.

exempt from sponsor deeming. Do not list the sponsor in CWW. Do not list any of the sponsor's income and assets.	as a qualified immigrant for five years from the date of entry, or <ul style="list-style-type: none"> • Under age 18, or • Was a legal resident on August 22, 1996, and born on or before August 22, 1931.
17- Amerasians	Eligible
18 - Native Americans born abroad	Eligible
19 - Trafficking victims, including the minor children, spouses, and, in some cases, the parents and siblings of victims of severe trafficking (treat as refugee under section 207 of the INA), the spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, or the spouse or child older than 21 who has received a derivative T visa, to the same extent as an immigrant who is admitted to the U.S. as a refugee under Section 207 of the INA.	Eligible
20 – Lawfully Residing	Ineligible

CHART 2

Immigration Status	CA RES Code	I-94 Codes	I-551 Codes	Other
Cuban/Haitian Entrant	11	212(d)(5) or paroled or C/H Entrant and from Cuba or Haiti or I-551 stamp and CU6 or CH6	CU6 or CU7, CH6	Unexpired and expired 1-551 stamp in foreign passport
Deportation Withheld	15	106 or 243(h) or 241(b)(3)	N A	USCIS Form I-688B annotated 274a.12(a)(10); USCIS Form I-766, annotated A10; order from an immigration judge showing deportation withheld under 243(h) or removal withheld under 241(b)(3)
Battered	16	AR1, AR6,	AR1, AR6,	I-551 stamp in

Immigrant		C20 through C29, CF1, CF2, CR1, CR6, CR7, CX1, CX2, CX3, CX6, CX7, CX8, F20 through F29, FX1, FX2, FX3, FX6, FX7, FX8, IF1, IF2, IR1, IR2, IR3, IR4, IR6, IR7, IR8, IR9, IW1, IW2, IW6, IW7, MR6, MR7, P21, P22, P23, P26, P27, P28; IB3, IB6, IB7, IB8, B11, B12, B16, B17, B20 through B29, B31, B32, B33, B36, B37, B37, B38, BX1, BX2, BX3, BX6, BX7, BX8 some Z13	C20 through C29, CF1, CF2, CR1, CR6, CR7, CX1, CX2, CX3, CX6, CX7, CX8, F20 through F29, FX1, FX2, FX3, FX6, FX7, FX8, IF1, IF2, IR1, IR2, IR3, IR4, IR6, IR7, IR8, IR9, IW1, IW2, IW6, IW7, MR6, MR7, P21, P22, P23, P26, P27, P28; IB3, IB6, IB7, IB8, B11, B12, B16, B17, B20 through B29, B31, B32, B33, B36, B37, B38, BX1, BX2, BX3, BX6, BX7, BX8 some Z13	foreign passport with one of the preceding codes; or IMPORT ANT: Applicant has filed an I-130 or I-360 petition as a battered immigrant. USCIS Form - 797 is documentation of approval of an I-130 application.
Amerasian		AM1, AM2, or AM3	A M 6, A M 7, or A M 8	I-551 stamp in foreign passport with one of the preceding codes
Foreign born Native American		S13	S1 3	I-551 stamp in foreign passport with S13 tribal membership card from federally recognized tribe.
Trafficking Victim		T-2, T-3, T-4 and T-5 known		Health and

		<p>as "Derivative T" visas are not currently available in the SAVE system.</p> <p>Call the toll-free trafficking verification line at 1-866-401-5510 to notify ORR of the benefits for which the individual has applied.</p>		<p>Human Service Office of Refugee Resettlement Certification Letter</p>
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This is not an all-inclusive list of government issued codes.

See also Process Help, [Section 82.8 Class of Admission \(COA\) Tables](#) for additional codes and explanations of the types of USCIS authorization documents.

3.12.1.2 Eligibility Pending Documentation of Immigration Status

7 CFR 273.2(f)(1)(ii)(B)

A non-citizen is ineligible until acceptable documentation of qualifying immigration status is provided unless:

1. The IM agency has submitted a document provided by a household to USCIS for verification. Pending such verification, the IM agency cannot delay, deny, reduce, or terminate the individual's eligibility for benefits on the basis of the individual's immigration status, or
2. The applicant or the IM agency has requested qualifying quarter information from SSA. SSA has responded that the individual has fewer than 40 quarters but is investigating to determine if more quarters can be determined. The IM agency must certify the individual pending the results for up to six months from the date of the original determination of insufficient quarters, or
3. The applicant or IM agency has requested verification from a federal agency for verification of the immigrant's status. The IM agency must certify the individual pending the results up to six months from the date of the original determination of insufficient quarters.

An immigrant who has a pending application for a qualifying status is not potentially eligible until the status has been granted.

FoodShare Wisconsin Policy Handbook §3.12.1.

I note that the agency appears to have identified petitioner as a “parolee lawfully present under Section 212(d)(5).” Petitioner is advised to review enrollment requirements specific to that classification (see Chart 1, above). Nothing in this Decision precludes petitioner from continuing to pursue his pending application; the foregoing information is provided for informational purposes only.

CONCLUSIONS OF LAW

As the respondent has not completed its review nor made a final determination regarding petitioner's FS eligibility, there is no FS issue ripe for determination by the Division of Hearings and Appeals at this time.

THEREFORE, it is

ORDERED

That petitioner's appeal is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

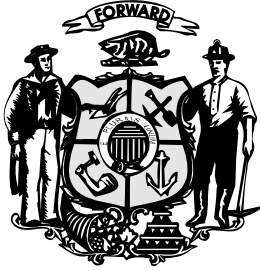
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of January, 2023



Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 12, 2023.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability